Supreme Court, U.S.
FILED

(1) No. 97-~~97 1081~~ OCT 20 1997

OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1997

MIKE PINCHER,

Petitioner,

vs.

ROCKWELL INTERNATIONAL CORPORATION, a Delaware corporation; UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL WORKERS OF AMERICA, UAW, AMALGAMATED LOCAL-887 UAW, an unincorporated labor union,

Respondents.

Petition For A Writ Of Certiorari
To The United States Court of Appeals
For the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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December 19, 1997

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60 pp

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Ninth Circuit Court of Appeals in Pincher v. Rockwell et al., docket no. 96-56317, a companion case to Williams v. Rockwell et al., docket no. 96-55339, an appeal based on the Central District Court case of Williams v. Rockwell, CV-94-03059 RAP (BQRx) has upheld sanctions against petitioner that contradict its own case law (as well as U.S. Supreme Court decisions) as to procedural due process?

2. Whether the Ninth Circuit has exercised prejudice against petitioner since sanctioning him in the previous case of Combs v. Rockwell, 927 F.2d 486 (9th Cir.), cert. denied, 502 U.S. 859 (1991)?

3. Whether the Ninth Circuit has decided, in essence, that procedural and substantive due process can be ignored in imposing sanctions and that freedom of access as espoused by this Court in Talamini v. All-State Insurance Co., 470 U.S. 1067, 105 S.Ct. 1824, 1827-28, 85 L.Ed.2d 125 (1985) is a mere fiction that the Ninth Circuit is not obliged to follow?

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner MIKE PINCHER petitions for a writ of certiorari to issue to review an opinion of the Ninth Circuit Court of Appeals upholding with modification an "unconscionably" high sanctions award (originally, $34,442.00, reduced to $29,681.00) against him which violated procedural and substantive due process both regarding this Court's prior decisions and the Ninth Circuit itself.

The Respondents were Rockwell International Corporation ("Rockwell") and the United Automobile, Aerospace and Agricultural Implement Workers of America and its Local 887 (collectively, "UAW").

Not only did the holding violate Constitutional provisions, but it demonstrated "double standards", whereby offensive conduct by both opposing counsel, who, inter alia, misrepresented the record below (and in Rockwell's counsel case, even that of the Ninth Circuit), was entirely ignored and "rubber-stamped" by the Ninth Circuit.

It is submitted that part of the reason for this (although by no means all of it) was that the Ninth Circuit had sanctioned Petitioner previously for a "frivolous appeal" and was determined to sanction him again regardless of the merits of the current litigation, even misrepresenting its own holding in a prior case to admonish him again.

It is essential that this decision be reviewed to maintain the integrity of the federal judicial system and to prevent imperialistic district court judges from

ruining practicing attorneys before them both in terms of reputation and finance through the motivation of personal animus rather than objective analysis of the merits of the case before them.

OPINIONS BELOW

(i) The date the judgment for Docket No. 96-5637 was entered was June 5, 1997.

(ii) The date of entry for denial of a petition for rehearing was July 17, 1997.

(iii) The date of entry for the district court imposing sanctions was July 29, 1996.

JURISDICTION

Supreme Court jurisdiction is invoked via its own Rules of Court, Rule 10(a) and (c), as the Ninth Circuit has made a ruling in conflict both with its own decisions and pronouncements of this Court. Also, 28 USC § 1254.

This petition was originally filed within ninety (90) days of the denial of petitioner's motion for reconsideration. It was returned in a letter from the court issued on October 22, 1997 for improper form. Sixty (60) days was given for petitioner to conform with court rules. This conforming petition has been postmarked and hence filed within sixty (60) days of said correspondence.

STATUTORY PROVISIONS INVOLVED

United States Code

28 USC @1927:

Any attorney or other person

> admitted to conduct cases in any court of the United States ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

PROCEDURAL RULES INVOLVED:

Federal Rules of Civil Procedure

FRCP 11(c):

> If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorney, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

STATEMENT OF THE CASE

The Ninth Circuit has allowed sanctions of $29,681 (reduced from $35,442) against petitioner as counsel for Plaintiff in Williams v. Rockwell et al., CV-94-03059 RAP (BQRx) [the cite is 116 F.3d 488 of a Memorandum, unpublished ruling] contrary to its own case law and contradictory rulings in the District Court. The bulk is for three "frivolous" motions (to file a Supplemental Complaint, for Reconsideration of its denial, and Motion to Stay Costs) that were not frivolous.

E.g., a claim for Invidious Discrimin-

ation By a Labor Union In Violation of a Federal Right was based on Richardson v. Communications Workers of America, 443 F.2d 974 (8th Cir.1971), cert. denied, 414 U.S. 818, 94 S.Ct. 38, 38 L.Ed.2d 50 (1973) and a Supplemental complaint based on "material" changed circumstances was held to be frivolous. In sum, the District Court punished petitioner for a frivolous claim simply because it disagreed with the Eighth Circuit's minority opinion, which has never been overruled and which the Ninth Circuit has never disapproved of.

The court below denied a motion for FRCP 11 sanctions by union defendant based on the Invidious Discrimination claim submitted as part of the Supplement but yet later granted a Motion for Sanctions for filing the Supplement whose factual grounds were identical to the Invidious Discrimination (which was a part of the Amended Complaint and also based on changed circumstances, consistent with U.S. v. Tham, 948 F.2d 1107, 1113 (9th Cir.1995) and U.S. v. Estrada-Lucas, 651 F.2d 1261, 1263-65 (9th Cir.1980).

Likewise, sanctions for deposition conduct were denied by a Magistrate (and not appealed by the opposition as provided by Local Rule and federal case law) and yet the District Court judge contradictorily stated he was ruling on matters not considered by the Magistrate when, in fact, those same matters constituted a basis for his ruling.

The Ninth Circuit held the Motion To Stay non-frivolous (not untimely) and only deducted the defendants' attorneys fees from that motion, although the District Court relied on the three "frivolous" motions together to constitute "subjective" bad

faith for 28 USC @1987 sanctions (inherent authority). So on its own terms, the Ninth Circuit should have reexamined whether "subjective" bad faith could really be "inferred" any longer, but declined the invitation.

Further, the Ninth Circuit upheld the sanctions award in part based on its admonition of petitioner in Combs v. Rockwell et al. for the content of deposition changes and that he had repeated that error in Williams.

Finally, defendants waited until the end of litigation before filing for most of their sanctions bases, totally ignoring notions of procedural due process.

The basis for jurisdiction in the District Court was 29 USC @185(a) re Breach of the Collective Bargaining Agreement and Breach of Duty of Fair Representation.

REASONS FOR GRANTING THE WRIT

This Court stated in Shillitani v. United States, 384 U.S. 364, 371, 86 S.Ct. 1531, 1563, 16 L.Ed.2d 622 (1966) that a court must exercise "the least possible power adequate to the end proposed." That principle is poorly served by tail-end, ambush tactics as were practiced herein. Hypocritically, the Ninth Circuit has ignored its own admonition as expressed in Operating Engineers Pension Trust v. A-C Company, 859 F.2d 1336, 1344 (9th Cir. 1988), where, although it commented on Rule 11 sanctions, is applicable to any demonstrations of lack of appropriate judicial restraint: "... we observe that the inappropriate imposition of Rule 11 sanctions in this case is not an isolated

occurrence. ... District courts simply must use more restraint than was employed here. Rule 11 is an extraordinary remedy, one to be exercised with extreme caution."

The significance of allowing sanctions to be brought at the tail end of litigation when it should have been brought at the time the alleged violations occurred is that procedural due process is otherwise violated. The Ninth Circuit has held this on the basis of "cumulation" in Matter of Yagman, 796 F.2d 1165, 1183, 1184 (9th Cir.1986) and yet ignores its own principle in not even addressing this matter in its opinion although raised in the appellate briefs and the District Court below.

The mutual ignoring of Yagman (due process) and minority court positions (Invidious Discrimination) threatens to stifle creativity and frustrate "freedom of access of the courts" espoused by this Court in Talamini v. All-State Insurance Co., 470 U.S. 1067, 105 S.Ct. 1824, 1827-28, 85 L.Ed.2d 125 (1985) (Stevens, J., joined by Brennan, Marshall and Blackman, concurring). See also Fed.R.Civ.P. 11, Notes of Advisory Committee on Rules, which state that Rule 11 "is not intended to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories."

Yet that is among many issues precisely at stake here. If parties are allowed to be "set up" for sanctions by game-playing below so that a record is built for a colossal Motion for Sanctions at the end, meritorious claims or strong advocacy for proper defense of a client will never be brought for fear of monetary reprisal in the end. If the advocate loses, there is too much apprehension that mere defeat equates with

a frivolous claim, which Talamini specifically crusades against.

Just as badly, the District Court pulled an "about face" on the petitioner. The Magistrate refused to impose sanctions for certain discovery behavior by petitioner and even though mechanisms exist to appeal that ruling, no appeal was taken. Then, when the District Court declined sanctions for the Invidious Discrimination claim as presented by the UAW, it necessarily had to find that the assertion of that claim in the Supplemental Complaint was not frivolous or sanctions under Rule 11 are mandatory. Conn v. Borjorquez, 967 F.2d 1419, 1420 (9th Cir. 1992).

Nonetheless, the District Court, even though expressly stating that it was not considering any matters already ruled upon by the Magistrate, based its sanctions holding in large part on the very deposition behavior that the Magistrate refused sanctions on. It also reversed itself (without saying so) by then calling the whole Supplemental Complaint frivolous because not based on new facts when those same "non-existent" new facts were the foundation for reasserting the Invidious Discrimination claim that the court had denied sanctions on previously.

Inexplicably, it awarded $5,000 in sanctions to the UAW over conduct directed at the counsel for Rockwell, which was also awarded $5,000. Although, inter alia, Petitioner disputes the court's foundation of that award, the key point here is that on its face, substantive due process is violated when two sides not even close to being impacted the same are nonetheless granted the exact same monetary award. This

shows an obvious prejudice by the District Court that is repeated and ignored by the Ninth Circuit.

The Ninth Circuit has compounded the felony in three respects. It not only did not even address these arguments at all but also misstated its own ruling in Combs to make it appear that petitioner was directly ignoring an admonition that it had made to him earlier concerning the propriety of making certain changes in deposition testimony, when that was not the basis of the ruling to begin with.

In sum, the court deliberately boot-strapped an earlier instance when it imposed attorney's fees and double costs on petitioner and his client to prejudice him in the instant case and lied about its own ruling to accomplish it. Of the three-judge panel, one judge (Chief Judge Procter Hug) was the same for both cases, and it shows.

When Combs is read, it will be clearly seen that Petitioner is being criticized for "allegedly" materially changing deposition answers without his client's approval and passing them off as his client's changes, not for allowing his client to make impermissible material changes. The propriety of the content of the changes themselves was never the issue in Combs, but in this opinion, the Ninth Circuit makes it appear that it was. It is submitted that this "misstatement" is not out of mere innocence or inadvertence -- it clearly demonstrates the prejudice toward petitioner that the Ninth Circuit has chosen to adopt. It saw an opportunity to "rub salt in the wound" and did so -- cruelly and dispassionately.

Under the circumstances, this created a conflict of interest because Judge Hug was, in essence, considering sanctions against petitioner twice and could not resist taking the first sanctions imposition out of context to find sanctions a second time, which is disgraceful.

The court also concluded that Plaintiff had not followed local procedural rules in preparing a Statement of Genuine Issues. Although Plaintiff disputed that he had not followed local rules, it is submitted that the court's holding contradicts its own ruling in earlier cases such as, inter alia, Henry v. Gill Industries, Inc., 983 F.2d 943, 950 (9th Cir.1993) and Marshall v. Gates, 44 F.3d 722, 723, 724-725 (9th Cir.1995). Again, it is submitted that the prejudice of the Ninth Circuit against petitioner had as much to do with its curious posture as any mysterious deficit in logic.

Preposterously, the Ninth Circuit concludes that "Local 887 was required to make a reasoned decision, but not a reasonable one". In other words, no matter how ill-conceived or absurd the decision is, as long as it contrivedly and superficially "appears" to have been arrived at in a "deliberated" fashion, it cannot be disputed. Under that logic, we could all be worshipping Thor, the Thunder God.

Further, the Ninth Circuit chose to concentrate on petitioner's improprieties during deposition and outside of it and "rubber-stamped" anything the loyal opposition said or did. During Plaintiff's deposition, Rockwell counsel said: "I don't believe that Rockwell, Mr. Williams, would have a treating physician. Since Rockwell

is a corporation, it would not be given medical treatment." If the Ninth Circuit cannot see that that comment is nothing less than sarcastic and demeans the intelligence of the deponent, it needs a serious reality check. Plaintiff was most certainly aware that a corporate entity or building is not in need of medical assistance.

Plaintiff's declaration as to his reaction to defense counsel's conduct, wherein he stated he was "subjected to a process whereby a large portion of it is treated as a game of one-upsmanship and sarcasm rather than something which at least should be conducted in a dignified fashion" was totally ignored. In other words, the deponent's impression, the target of the deposition, does not count. Rockwell counsel would constantly throw jabs at the deponent, a very small sampling of which is: "You're not guessing. You can read minds?" and "Do you read minds?" Apparently, he can insult the deponent's intelligence and sense of dignity with impunity but he is protected from all retort. Justice is a one-way street in favor of deep-pockets.

Rockwell counsel even stated during a depo: "Mr. Pincher, why don't you shut your mouth?" Of course, petitioner, according to the Ninth Circuit, is supposed to ignore an insult like that. Then why is it that Rockwell counsel is not required to ignore his portion of the receiving end. Is there not a problem here with <u>both</u> procedural and substantive due process? Is not a hypocritical "double standard" acutely in evidence? Why is it not that either both attorneys are at fault or neither is? Even if petitioner is viewed as "hypersensitive" (again disputed), does that give opposing counsel the irrevocable license "to stick in

the needle" to both he and his client, who was also offended by this behavior?

This Court is reminded that during its October term of 1996, the Ninth Circuit was reversed an incredulous 27 out of the 29 times that certiorari was granted. Petitioner submits that the likelihood is very high that that dubious distinction will be reenforced if an appeal is granted in this instance.

CONCLUSION

Obviously, petitioner seeks a total reversal of the obscene sanctions award at issue here or, at the very least, a substantial reduction of sanctions far exceeding the Ninth Circuit's modest modification. As a first step toward accomplishing this mission and for the aforementioned reasons, a writ of certiorari should issue to review the seriously-flawed judgment of the Ninth Circuit.

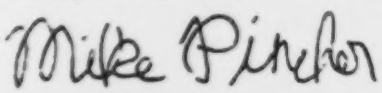
The Ninth Circuit should be severely admonished for its obvious sabotage of a legal practitioner who, even if assuming arguendo he can be found to be somewhat blameworthy, was retaliated against in ruthless fashion by an irresponsible court which adversely impacted his legal career, financial status, reputation generally and emotional well being and which was apparently hell-bent on achieving exactly those results.

Lastly, the same should extend to District Court Judge Richard A. Paez. How he can both ignore inflammatory conduct on one end, severely punish the responding side's counsel on the other and make rulings blatantly inconsistent with his own prior

holdings should be an embarrassment to the bench. Furthermore, Judge Paez's incompetence and tendency toward vindictiveness should bring his worthiness as a federal judge severely into question. His petty "selection and elimination" of evidence self-serving to meet his predestined end is virtually criminal in scope.

His shameless treatment of petitioner has not engendered any respect from him whatsoever, only contempt, which, under the facts of this case, is the only logical result of the injustice that has been meted upon him.

Respectfully submitted,



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December 19, 1997.

Appendix A

ENTERED
CLERK, U.S.
DISTRICT COURT
JUL 29 1996

FILED
CLERK, U.S.
DISTRICT COURT
JUL 26 1996

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

Arthur Williams, Plaintiff, vs. ROCKWELL INTERNATIONAL CORPORATION,a Delaware corporation; UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, AMALGAMATED LOCAL 887-UAW, an unincorporated labor union, and DOES 1 through 100, inclusive, Defendants	) CASE NO. CV-94 3059 RAP (BQRx))) ORDER GRANTING DEFENDANTS' MOTIONS FOR MONETARY SANCTIONS AGAINST PLAINTIFF'S COUNSEL

I.

INTRODUCTION

Pending before the Court are defendants' Motions for Sanctions against plaintiff's attorney, Michael Pincher. As described

below, Mr. Pincher, in prosecuting this action, committed numerous incidents of unprofessional conduct that significantly increased defendants' litigation costs. His conduct hindered the Court's duty to "secure the just, speedy, and inexpensive determination" of this action. Fed.R.Civ.P. 1. His obstructive litigation tactics exacted a substantial toll on the litigants and attorneys who were required to endure Mr. Pincher's conduct. The Court cannot tolerate tactics that make litigation a battle rather than a search for truth. For the reasons set forth below, the defendants' Motion for Sanctions against Mr. Pincher are granted.

II.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

While employed with Rockwell International Corporation ("Rockwell"), plaintiff Arthur Williams asserted at various times that Rockwell wrongfully imposed discipline against him and failed to promote him. Plaintiff challenged Rockwell's actions by filing grievances pursuant to the collective bargaining agreement ("CBA") between Rockwell and the International Union, United Automobile, Aerospace, and Agricultural Workers of America, Local 887 ("UAW"), the bargaining unit of Rockwell employees. Plaintiff was represented by the UAW throughout the various grievance proceedings. Many of plaintiff's grievances were either resolved or withdrawn.

In December 1991, however, plaintiff discovered for the first time an unfavorable memorandum in his personnel file, which prompted him to file five grievances. These

grievances concerned not only the letter, but also attempted to resurrect grievances which plaintiff had already litigated through the CBA grievance process. The UAW and Rockwell resolved these grievances in a manner which did not satisfy plaintiff. The UAW's refusal to further pursue several of plaintiff's new grievances prompted him to commence this action under the Labor Relations Management Act, 29 U.S.C. @185(a), against Rockwell and the UAW.

On May 11, 1994, plaintiff filed his original Complaint, alleging a cause of action for breach of the CBA against Rockwell and a cause of action for breach of the duty of fair representation against the UAW. Plaintiff filed a First Amended Complaint on August 16, 1994, adding a claim for intentional infliction of emotional distress against Rockwell and a claim for "invidious discrimination" against the UAW. On October 3, 1994, the Court granted Rockwell's Motion to Strike, without leave to amend, plaintiff's claim against Rockwell for intentional infliction of emotional distress which sought, inter alia, attorney's fees as well as general compensatory and punitive damages. The Court also struck without leave to amend the claim for invidious discrimination against the UAW.

In April 1995, Mr. Pincher filed a motion for leave to file and Second and Supplemental Complaint to assert the same claims that the Court had dismissed from plaintiff's First Amended Complaint. This motion, which was essentially a motion for reconsideration, did not comply with Local Rule 7.16. Local Rule 7.16 authorizes a motion for reconsideration of a court's decision based on: (1) a material

difference in fact or law from that presented to the Court before such decision that in the exercise or [sic] reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision; (2) the emergence of new material facts or a change of law; or (3) a manifest showing of a failure to consider material facts presented to the Court. The motion was not field on any of these grounds; it was completely without merit and was denied by the Court on May 24, 1995. Mr. Pincher's refusal to accept the Court's prior orders forced both defendants to incur unnecessary expenses in opposing a completely frivolous motion.

After the Court granted defendants' Motions for Summary Judgment on December 6, 1995, plaintiff filed a motion for reconsideration of the order granting summary judgment. Mr. Pincher, however, asserted the identical arguments that he raised in opposition to the summary judgment motion, thus violating Local Rule 7.16.[1] In addition, Mr. Pincher filed plaintiff's motion before the Court had even issued its final order granting the motions for summary judgment. The Court summarily denied plaintiff's Motion for Reconsideration on January 23, 1996.

On November 23, 1995, prior to entry of the judgment, plaintiff filed a motion to stay enforcement of defendants' cost bill. The Court summarily denied this motion on the grounds that it was premature and

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[1] Local Rule 7.16 prohibits a party from repeating any oral or written argument made in support of the original motion.

admonished Mr. Pincher for wasting defendants' and the Court's time. Prior to the Court's ruling, however, defendants had filed their opposition and made an unnecessary trip to the courthouse.

Mr. Pincher's abusive litigation tactics did not end with the frivolous motions. Defendants attempted to take plaintiff's deposition to establish, among other things, that plaintiff was seeking to litigate claims that were previously resolved under the CBA's grievance procedures. The deposition was a challenge for any seasoned litigator. Mr. Pincher constantly objected to questions by defendants' attorneys. During the second day of plaintiff's deposition, Mr. Pincher instructed plaintiff not to answer a proper question, thereby forcing defendants to stop the deposition and file a motion to compel plaintiff to answer the question.

Rockwell's motion was granted on October 19, 1994 by Magistrate Judge Robbins, who orderd, inter alia, that plaintiff attend his deposition; that Mr. Pincher comply with Federal Rule of Civil Procedure ("Fed.R.Civ.P.") 30(d)(1); and that plaintiff pay sanctions in the amount of $600.00. After plaintiff had appeared for one additional session of his deposition, Mr. Pincher notified defendants by letter that plaintiff would not appear for the remaining sessions, directly violating the Magistrate Judge's order. Mr. Pincher filed a motion for a "protective order," which was summarily denied by Magistrate Judge Robbins. Magistrate Judge Robbins issued a second order, admonishing all counsel to "behave within the bounds of proper decorum" in this action. Even after this second order, Mr. Pincher threatened that plaintiff

might not appear at his deposition. During one session of the deposition, the following exchange took place:

> Mr. Feinberg: I'd like to know if we're going to be here on Monday.
>
> Mr. Pincher: You're not going to know until I decide one way or the other. But this dorkface [gesturing to defense counsel Mr. Michaels] is pulling his crap all over again. This is something where two out of three attorneys would like to do it, but this jerk had decided that he won't.
>
> ...
>
> Mr. Pincher: Well, I hope you make a trip. In fact, stand on your head during the weekend, counsel.

(Plaintiff's Deposition at 1491-92.).

Mr. Pincher constantly disrupted the deposition by making unfounded and improper objections in a loud, inflammatory, and argumentative manner, even after the October 1994 order of Magistrate Judge Robbins. For example, Mr. Pincher objected to one question by stating that it was "idiotic". (Id. at 254.) When his objections were disregarded, he engaged in name calling; threatened to walk out of the depositions; and threatened to inflict personal harm on defense counsel. In one instance, during the February 3, 1995 session of plaintiff's deposition, Mr. Pincher stated, "I don't like your tone, and shove it up your

rectum." (Id. at 295.) Mr. Pincher and his client accused Rockwell counsel Lawrence A. Michaels of "laughing like a hyena" and "outright laughing and snickering." (Id. at 791-92).

Mr. Pincher also made racially discriminatory remarks. He stated, "I would think that even -- even someone of Mr. Michael's persuasion would, for once, budge a little bit." When asked by Mr. Feinberg what he meant by "persuasion", Mr. Pincher then explained as follows: "Well, first of all, I wouldn't care what kind of offense you took. But for the record, no, I wasn't talking about the Jewish persuasion, even though it's tempting." (Plaintiff's Deposition at B-53:5-22.)

Throughout the litigation, Mr. Pincher accused defendants of "bad faith" conduct, largely pointing to Rockwell's refusal to release the original of Mr. Williams' deposition transcript to his office for review and signing. Mr. Pincher accused Rockwell of improperly following the Federal Rules of Civil Procedure by not stipulating to release the original deposition transcripts to plaintiff.[2] Fed.R.Civ.P. 30(f), however, does not require a party to release the original transcript to the deponent. Despite Rockwell's efforts, Mr.

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[2] Rockwell's refusal to release the original deposition transcript was based on Mr. Pincher's record of past improper attempts to alter deposition testimony, that, in one case, resulted in the ultimate sanction of dismissal. Combs v. Rockwell Int'l Corp., 927 F.2d 486 (9th Cir.1991), cert. denied, 502 U.S. 859 (1991).

Pincher still managed to assist his client in impermissibly altering deposition testimony under the pretext of "correcting" the testimony pursuant to Fed.R.Civ.P. 30(e).[3]

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[3] Fed.R.Civ.P. 30(e) permits the review and correction of deposition testimony in form (i.e., reporter reported "yes" when deponent said "no"), but "it cannot be interpreted to allow one to alter what was said under oath...A deposition is not a take home examination". Greenway v. International Paper Company, 144 F.R.D. 322, 325 (W.D.La. 1992).

Among the answers changed were:

(a) Question:	Do you contend that the company policies are a part of the collective bargaining agreement (Williams Deposition ("Williams Depo") 196:15-16)
Original Answer:	No. I'm just trying to clarify that with you. (Williams Depo 196:17-18)
Revised Answer:	Yes, they can be. Often they are part of the Managemen Prerogatives, which is Article VII of the Master Agreement.

Mr. Pincher also delayed the proceedings by failing to produce the requested documents. Rockwell served its first request for production of documents ("first request") seeking 42 categories of documents. In response, Mr. Pincher produced only a few pages of documents. On August 17, 1994, Rockwell sent a letter to Mr. Pincher requesting that plaintiff produce all required documents in response to its first request. In a reply dated August 23, 1994, Mr. Pincher stated he would produce the documents immediately. (Rockwell's Motion for Sanctions ("Rockwell's Motion"), Exhibit ("Exh.") D.) In a letter dated August 30, 1994, Rockwell deferred seeking an order to compel production based upon the letter of August 23, 1994. (Rockwell's Motion, Exh. E.)

Mr. Pincher did not produce the documents in the manner required by Fed.R.Civ.P. 26. Mr. Pincher claims he complied when he showed up for a deposition session with a shopping cart filled with documents. Mr. Michaels refused to go through the cart of documents to see if there were any documents relevant to Rockwell's first request. (Plaintiff's Deposition at 886-97.)

Mr. Pincher delayed the prompt resolution of this action by giving evasive answers to defendants' interrogatories.

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the discipline. A warning notice was written up. It was later withdrawn but I still had been initially given discipline.

Rockwell served plaintiff with "contention iterrogatories", in an attempt to verify the various claims he was asserting. Plaintiff's responses consisted of virtually nothing but objections. Plantiff justified his unresponsiveness on two grounds: (1) Rockwell had already asked the same questions during plaintiff's deposition and (2) plaintiff had already provided relevant documents. Rockwell did not file a motion to compel further answers. (See Rockwell's second set of interrogatories and plaintiff's objections and responses to the second set of interrogatories, Exhs. F and G, respectively.)

Throughout the litigation, Mr. Pincher continued to harass and threaten opposing counsel. In one letter from Mr. Pincher to Mr. Michaels and UAW's counsel, Michael Feinberg, dated July 20, 1994, Mr. Pincher wrote:

> Unfortunately, I have professional parameters that I am expected to comply with in conducting my law practice. Be advised that was the only constraint preventing me from enforcing a personal and decisive remedy to handle such an outrage.
> ...
> If you continue to exercerbate this situation I will respond in kind. I will not predict the specifics of the response but I can assure you, you will not appreciate it.

(Rockwell's Motion, Exh. H.)

In Mr. Pincher's complaints filed against Mr. Michaels and Mr. Feinberg with the State Bar, Mr. Pincher wrote:

> I am trying to maintain a professional profile regarding this but advise the Bar that I will not tolerate this kind of behavior much longer without resorting to personal resolution of the matter. I consider involving my client in such interplay unforgivable. If the resolution becomes personal, it will not be a gentle one. I urge the Bar to act before I find it personally necessary to do so. It is not an alternative I desire or seek.
>
> (Rockwell's Motion, Exh. J.)

During a phone conversation with Mr. Feinberg, Mr. Pincher stated that he had all he could do "to keep from murdering Mr. Michaels." (Michael Pincher Declaration at 12:8-12.)

On February 6, 1996, immediately following the hearing on defendants' Motion for Sanctions, after the Court had called a recess, Mr. Pincher grabbed Mr. Michaels' jacket from behind as they were exiting the courtroom. As Mr. Michaels turned around, Mr. Pincher placed his hands on Mr. Michaels' chest and began to say something about "assaulting" Mr. Michaels. Court bailiffs had to intervene and escort Mr. Pincher back into the courtroom until Mr. Michaels left. (Supplemental Declaration of Lawrence Michaels, at 3:1-15.)

In addition to the threats of physical violence, Mr. Pincher constantly used abusive language. For example, in a letter to Mr. Michaels, dated August 23, 1994, Mr. Pincher stated: "In spite of my finding you personally distasteful and a general disgrace to our profession (in sum, you <u>suck</u> -- particularly after your joint performance

with Michael Feinberg to try to embarrass me over the Combs case...)" (Rockwell's Motion, Exh. D.) Mr. Pincher advised Mr. Michaels that Mr. Pincher had "an ax to grind" against Rockwell and when Mr. Michaels asked why, Mr. Pincher replied, "If you knew how to read, you would know." (Lawrence Michaels Declaration at 35:20-26.)

It is apparent that Mr. Pincher did, indeed, have "an ax to grind" against Rockwell. In fact, Mr. Pincher has a history of employing bad faith litigation tactics against defendants. In Coombs [sic] v. Rockwell International Corp., 927 F.2d 486 (9th Cir. 1991), cert. denied, 502 U.S. 859 (1991), the Ninth Circuit affirmed the district court's dismissal of plaintiff's case as a sanction for altering deposition testimony. Mr. Pincher, who represented the plaintiff in that action against Rockwell, made thirty-six changes to plaintiff's deposition; many of these changes materially altered the substance of plaintiff's testimony. Mr. Pincher's changes dealt with issues of central importance to an upcoming summary judgment hearing. Coombs [sic], 927 F.2d at 488. However, Mr. Pincher's unethical conduct did not help the client's case. As the Ninth Circuit noted "the mendacity of the client and the combined fraud and incompetence of his counsel are so egregious that there is no need to reach the merits of the motion for summary judgment." Id., 927 F.2d at 489. It held that the case was properly dismissed. Id. Apparently the dismissal sanction in the Coombs [sic] case did little to deter Mr. Pincher from engaging in bad faith litigation tactics in this action.

Defendants now seek sanctions against plaintiff's counsel pursuant to 28 U.S.C.

@1927, Fed.R.Civ.P. 37, Local Rules 7.19 and 27, and the Court's inherent authority. Defendants contend that Mr. Pincher engaged in a pattern of harassment and abuse against defendants and their attorneys. Defendants further contend that such improper and unethical conduct demonstrates such a degree of bad faith that this Court should impose a substantial monetary sanction against Mr. Pincher. The Court agrees.

III.

STANDARDS

Defendants ask the Court to rely on its inherent authority to sanction Mr. Pincher's bad faith conduct. The Supreme Court has cautioned that the Court should not hastily resort to its inherent authority to impose sanctions; it should rely on its inherent power only where available statutory remedies are inadequate. Thus, the Court briefly sets forth the relevant standards for the various statutes and rules for imposing sanctions. Although the following statutes and rules provide firm grounds for sanctioning bad faith conduct, the statutes and rules do not fully address Mr. Pincher's conduct. Therefore, the Court first relies on the statutes and rules, and then resorts to its inherent authority in sanctioning Mr. Pincher's conduct.

A. 28 U.S.C. @1927

28 U.S.C. @1927 states that any attorney "who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct." Sanctions pursuant to @1927 must

be supported by a finding of subjective bad faith. New Alaska Develop. Corp. v. Blas ex rel. Chargualaf v. Winkler, 792 F.2d 858, 860 (9th Cir.1986); Barnd [sic] v. City of Tacoma, 664 F.2d 1339, 1343 (9th Cir.1982). Frivolous conduct is not sufficient. "Bad faith", however, may be inferred from totally baseless conduct. Optyl Eyewear Fashion Int'l Corp. v. Styles Co. Ltd., 760 F.2d 1045, 1050-51 (9th Cir.1985).

Wages v. Internal Revenue Service, 915 F.2d 1230, 1235 (9th Cir.1990), highlights the type of conduct that the district court may consider to infer bad faith for the purpose of awarding sanctions under @1927. In Wages, plaintiff brought a civil rights action against Internal Revenue agents, and others based on the IRS' garnishment of his paychecks. The district court dismissed plaintiff's complaint with prejudice on the grounds that the complaint failed to state a claim upon which relief could be granted. Wages, 915 F.2d at 1233. Plaintiff proceeded to file an amended complaint which the district court noted was substantially the same as the one its previously rejected. Id. The district court struck the amended complaint, and awarded the government attorney's fees pursuant to 28 U.S.C. @1927 on the ground that plaintiff had multiplied the proceedings unreasonably and vexatiously. Id. The Ninth Circuit affirmed the district court's imposition of monetary sanctions. Id. at 1235. It reasoned that by attempting to file an amended complaint that did not materially differ from one which the district court had already concluded did not state a claim, plaintiff evidenced bad faith in multiplying the proceedings in this case 'unreasonably and vexatiously.'" Id.

However, the Ninth Circuit has also held that amount recoverable under 28 U.S.C. @1927 is limited. Only excess fees resulting from the attorney's improper conduct are recoverable. United States v. Blodgett, 709 F.2d 608, 610 (9th Cir.1983). Thus, the Court must determine the amount of unnecessary time attributable to the attorney's improper tactics, and fees must be limited accordingly.

B. Local Rules 7.19 and 27

Local Rules 7.19 and 27 also provide for sanctions when frivolous motions or opposition to motions are filed. Local Rule 7.19 provides that "the presentation to the Court of frivolous motions or opposition to motions or the failure to comply fully with this rule subjects the offender at the discretion of the Court to the sanctions of Local Rule 27." Local Rule 27 states that "violation of or failure to conform to any of the Local Rules, the Fed.R.Civ.P., Fed.R.Crim.P. or Fed.R.App.P., shall subject the offending party or counsel to such penalties, including monetary sanctions and/or the imposition of costs and attorney's fees to opposing counsel, as the Court may deem appropriate under the circumstances."

C. Fed.R.Civ.P 30(d)

Defendants urge the Court to sanction Mr. Pincher's abusive deposition tactics under Fed.R.Civ.P. 37(d). Under Rule 37(d), the Court may impose monetary sanctions and expenses against a party who has refused to attend his deposition or against that party's attorney. Although Mr. Pincher threatened that plaintiff might not attend his deposition, plaintiff did, in fact,

attend all sessions of his deposition. thus, Fed.R.Civ.P. 37(d) does not apply.

However, Mr. Pincher's disruptive deposition tactics are sanctionable under Fed.R.Civ.P. 30(d). Under Fed.R.Civ.P. 30(d)(1), any objection to evidence during a deposition must be stated concisely, in a non-argumentative and non-suggestive manner. Fed.R.Civ.P. 30(d)(2) provides that "if the Court finds such an impediment, delay, or other conduct that has frustrated the fair examination of the deponent, it may impose upon the persons responsible an appropriate sanction, including the reasonable costs and attorney's fees incurred by any parties as a result thereof." Fed.R.Civ.P. 30(d)(3) authorizes appropriate sanctions not only when a deposition is unreasonably prolonged, but also when an attorney engages in other practices that improperly frustrate the fair examination of the deponent. Wright & Miller, Federal Practice and Procedure ("Fed. Prac. and Proc."), Volume 8A, Page 22 (1994). In general, counsel should not engage in any conduct during a deposition that would not be allowed in the presence of a judicial officer. Id.

D. Court's Inherent Authority

Federal courts have the inherent power to impose sanctions against both attorneys and parties for "bad faith" conduct in litigation or for "willful disobedience" of a court order. Roadway Express, Inc. v. Piper, 447 U.S. 752, 766 (1980). "Bad faith" means that counsel acted "vexatiously, wantonly, or for oppressive reasons." Chambers v. Nasco, 501 U.S. 32, 45-46, 111 S.Ct. 2123, 2133 (1991). A party may also be shown to have acted in "bad faith" by intentionally delaying or disrupting litigation or hampering

enforcement of a court order. Id. Bad faith conduct occurring either in and outside of the courtroom is sanctionable. Id.

Monetary sancitons under the court's inherent power are not limited to "excess" costs or fees. The fee award, however, must relate to the "bad faith" conduct involved. Under its inherent authority, a court may impose a fine, attorney fees and costs on the offending attorney, discipline, a formal reprimand, dismissal, or exclusion of evidence. Schwarzer, Tashima, & Wagstaffe, Federal Civil Procedure ("Fed.Civ.Pro."), 17:170.1. Factors that a court should consider when exercising its inherent authority include: (1) the nature and quality of the conduct at issue; (2) the pattern of wrongdoing; (3) the sanctioned party's ability to pay; and (4) whether the wrongdoing prejudiced the opponent or hindered the administration of justice. Schwarzer, Tashima, and Wagstaffe. Fed.Civ.Pro., 17:172.

If the sanctionable conduct can be adequately punished under other rules, the court should not rely on its inherent powers. "But if in the informed discretion of the Court, neither the statute nor the rules are up to the task, the Court may safely rely on its inherent power." Chambers, 501 U.S. at 50; 111 S.Ct. at 2136.

In Chambers, the party engaged in extended misconduct consisting in part of filing frivolous pleadings (sanctionable under @1927). Rather than attempting to correlate particular conduct to a particular rule or statute, the district court properly imposed sanctions for the entire course of conduct under its inherent powers.

Chambers, 501 U.S. at 50-51; 111 S.Ct. at 2136. The Supreme Court noted that the district court could have employed Fed.R.Civ.P. 11 to sanction Chambers for filing "false and frivolous pleadings," and that some of the other conduct may have been reached through other rules. Id. It reasoned, however, that much of Chamber's bad faith conduct was beyond the reach of the rules. Id. The Court concluded that the district court's inherent power to sanction is appropriately used in cases where the conduct, sancitonable under statute or rule, was intertwined with conduct that only the inherently power of the court could address. Id., 501 U.S. at 51; 111 S.Ct. at 2136.

E. Local Rule 2.5.2

Local Rule 2.5.2 is another basis that the Court may rely upon to sanction bad faith litigation tactics that interfere with the administration of justice. Local Rule 2.5.2 states:

> No attorney shall engage in any conduct which degrades or impugns the integrity of the Court or in any manner interferes with the administration of justice therein.

In United States v. Wunsch, 1996 WL 275005 (9th Cir.1996), the Ninth Circuit delineated the standards for determining whether certain conduct is sanctionable under Local Rule 2.5.2. Although the Wunsch Court found that the alleged misconduct before it was not sanctionable misconduct under Rule 2.5.2, the discussion clearly explains that where the conduct either (1) impugns the integrity of the court or (2) interferes with the administration of justice, such

conduct is sanctionable under Rule 2.5.2. Wunsch, 1996 WL 275005, *5-6.[4]

The Wunsch court noted Principe v Assay Partners, 154 Misc.2d 702, 586 N.Y.S.2d 182 (N.Y.Sup.Ct. 1992), as an example of the type of conduct that may be covered by the Rule. In Principe, the New York Supreme Court sanctioned counsel for offensive and unprofessional conduct during a deposition. During the deposition, the plaintiff's attorney made a series of demeaning remarks directed against a female attorney representing one of the defendants at the deposition. Principe, 586 N.Y.S.2d at 184. The remarks, which included references to the female attorney as "little lady", "little mouse," "young girl," and "little girl," were accompanied by rude hand gestures and had been made in front of other counsel, the witness, and a court reporter. Id. The Principe Court concluded that sanctions were appropriate, relying on

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[4] In Wunsch, a criminal defense attorney sent a letter containing sexist comments to an assistant United States Attorney following the defense attorney's disqualification from the case. The Ninth Circuit concluded that the sexist comments about female lawyers "cannot be equated with an attack on the motivation or the integrity or the competence of the judge []." Wunsch, 1996 WL 275005, *5. It further reasoned that a single letter "involving an isolated expression of a privately communicated bias: would not adversely affect the administration of justice. Id. at *6.

accepted notions of conduct and New York's Code of Professional Responsibility. Id. at 185.

In Principe, the attorney's sexist behavior was not only deplorable, but occurred during a deposition, and interfered with the fair examination of the deponent. Thus, where the litigation tactics interfere with the administration of justice, the offensive conduct is sanctionable under Rule 2.5.2. Wunsch, 1996 WL 275005, *6.

IV.

ANALYSIS

A. Frivolous Motions and Pleadings

Defendants contend that Mr. Pincher filed frivolous motions that multiplied the proceedings unreasonably and vexatiously. The Court agrees. Mr. Pincher filed not one, but three frivolous motions. In May 1995, he filed a motion for leave to assert the very same claims that the Court had dismissed, without leave to amend, from plaintiff's First Amended Complaint. This motion was essentially a motion for reconsideration under Local Rule 7.16, which did not comply with the basic requirements of that Rule. There was simply no merit to this motion.

After the Court granted defendants' Motions for Summary Judgment, Mr. Pincher filed a motion for reconsideration, before the Court had entered its final order. Not only was the motion premature, but it also failed to comply with the basic requirements of Local Rule 7.16(c). Moreover, Mr. Pincher asserted the same arguments that he presented in opposition to the summary

judgment motion.

On November 13, 1995, prior to the entry of judgment and taxing of costs under Local Rule 16, Mr. Pincher filed a motion on plaintiff's behalf to stay enforcement of defendants' cost bill pending appeal. Since the clerk had not yet taxed costs and plaintiff had not yet exhausted the avenues of relief under the Local Rules, Mr. Pincher's motion was not only premature, but also lacked merit.

Mr. Pincher's conduct was intentional or, at the very least, committed with a reckless disregard of the basic mandate of the Federal Rules of Civil Procedure. Mr. Pincher's bad faith can be inferred from his filing of not one, but three frivolous motions. Thus, the excess costs and attorney fees incurred by defendants, as a result of Mr. Pincher's bad faith conduct in unreasonably and vexatiously multiplying the proceedings in this action, must be paid by Mr. Pincher pursuant to @1927 and Local Rule 7.19.

Rockwell has requested sanctions against Mr. Pincher in the amount of $26,017.50 based on the attorney time incurred in preparing and opposing specified motions. The Court grants the following from Rockwell's request:

(1) For the 12.0 hours Rockwell spent in preparing its opposition to plaintiff's Motion for Leave to File a Second Supplemental and Amended Complaint: $3,120.00

(2) For the 21.60 hours Rockwell spent in preparing its opposition to plaintiff's premature Motion

for Reconsideration of the court's order granting summary judgment which contained no new grounds: $5,616.00.

(3) For the 16.30 hours Rockwell spent in preparing its opposition to plaintiff's premature Motion to Stay Execution of Costs: $3,311.00

Total: $12,047.00

The UAW has requested sanctions against Mr. Pincher in the amount of $3,925.00 based on the attorney time the UAW incurred in preparing and opposing specified motions. The Court grants the following from UAW's request:

(1) For the 10.5 hours the UAW spent in preparing its opposition to plaintiff's Motion to File a Second Supplemental and Amended Complaint: $945.00

(2) For the 14.5 hours the UAW spent in preparing its opposition to plaintiff's premature Motion to Stay Execution of Costs and Motion for Reconsideration of summary judgment: $1,450.00

Total: $2,395.00

B. Discovery Abuse

Mr. Pincher disrupted and obstructed discovery on numerous occasions by stopping or threatening to stop depositions; by making unfounded and improper objections; by using an inappropriate manner in making the objections; by failing to produce requested

documents, by changing deposition testimony; and by providing evasive answers to interrogatories. Even after Magistrate Judge Robbins had issued two orders, compelling plaintiff to attend his deposition; sanctioning Mr. Pincher $600.00; and ordering Mr. Pincher to comply with Fed.R.Civ.P. 30(d)(1) in making his objections; Mr. Pincher continued to attempt to delay the proceedings by making unfounded and improper objections in a loud, inflammatory, and argumentative manner. When the improper objections were disregarded by defendants' attorneys, Mr. Pincher resorted to verbal abuse, threats of physical violence, and racially discriminatory remarks, thereby further hampering the completion of Mr. Williams' deposition. The $600.00 sanction had little, if any, impact on Mr. Pincher.

Although Magistrate Judge Robbins sanctioned Mr. Pincher for ordering plaintiff not to answer a proper deposition question and for failing to comply with Fed.R.Civ.P. 30(d)(1) in formulating his objections to deposition questions, the Court may sanction Mr. Pincher for his conduct that occurred after the Magistrate's sanctions order. Fed.R.Civ.P. 30(d)(3) authorizes the Court to impose appropriate sanctions not only when a deposition is unreasonably prolonged, but also when an attorney engages in other practices that frustrate the fair examination of the deponent. An appropriate sanction may include reasonable costs and attorney's fees incurred as a result of the conduct. Mr. Pincher's argumentative objections, verbal abuse, threats of physical violence, and racially discriminatory remarks clearly frustrated the fair examination of the plaintiff and unreasonably prolonged

plaintiff's deposition. Defendants' attorneys were not only subjected to Mr. Pincher's abusive, unprofessional, and inexcusable conduct, but also incurred substantial costs, including attorney's fees, as a result of Mr. Pincher's unprofessional behavior. Given the nature of his conduct and its impact on the length and cost of the deposition, Mr. Pincher is hereby ordered to pay sanctions in the amount of $5,000.00 to Rockwell and $5,000.00 to the UAW.

C. Interference with the Administration of Justice

Mr. Pincher's conduct clearly interfered with the administration of justice. As stated above, Mr. Pincher filed three frivolous motions; threatened to suspend plaintiff's deposition; and instructed plaintiff not to answer deposition questions. Mr. Pincher's conduct not only defendants' attempts to obtain a fair examination of plaintiff, but also forced the Court to waste its time and resources in granting not one, but two orders compelling Mr. Pincher to comply with Fed.R.Civ.P. 30(d). Thus, Mr. Pincher flagrantly violated Local Rule 2.5.2. which provides that no attorney shall engage in any conduct which interferes with the administration of justice. This finding further reinforces the Court's authority to issue the sanctions imposed above and provides an alternative basis.

D. Personal Abuse Against Defense Counsel

In imposing sanctions, the Court has relied primarily on 28 U.S.C. @1927, Fed.R.Civ.P. 30(d), and various Local Rules. However, the statute and rules are

inadequate because they do not fully address Mr. Pincher's conduct. Specifically, it is doubtful whether they would support the imposition of sanctions against Mr. Pincher for the threats of physical violence and abusive language he heaped on defendants' attorneys outside of the deposition. Thus, the Court resorts to its inherent authority in sanctioning this conduct.

Throughout the course of the litigation, Mr. Pincher used abusive language and threatened opposing counsel with physical violence. In a telephone conversation with Mr. Feinberg, Mr. Pincher stated that he had all he could do "to keep from murdering Mr. Michaels." On February 6, 1996, immediately following the Court's hearing on defendants' Motions for Sanctions, Mr. Pincher grabbed Mr. Michaels' jacket from behind as they were exiting the courtroom. As Mr. Michaels turned around, Mr. Pincher put both his hands on Mr. Michaels' chest and said something about assaulting Mr. Michaels. Court bailiffs had to intervene and escort Mr. Pincher and escort Mr. Pincher back to the courtroom until Mr. Michaels left.

Mr. Pincher's conduct clearly evidences bad faith, which is required for a sanction imposed under the Court's inherent authority. In Chambers, 501 U.S. at 45-46, 11 S.Ct. at 2133, the Supreme Court defined bad conduct as vexatious, wanton, or oppressive conduct. Threats of physical violence or verbal abuse are, by definition, vexatious and oppressive. Thus, such conduct is sanctionable under the Court's inherent powers. Pursuant to the Court's inherent authority, Mr. Pincher is hereby ordered to pay sanctions in the amount of $5,000.00 to Rockwell and $5,000.00 to the UAW for his abusive conduct that occurred

during the course of the litigation. This amount does not include any sanctions for Mr. Pincher's conduct during plaintiff's deposition, which the Court sanctioned under Fed.R.Civ.P. 30(d).

V.

REQUEST FOR STAY OF JUDGMENT PENDING APPEAL

Mr. Pincher requests that the execution of any order granting sanctions against him be stayed pending appeal. (Declaration of Mr. Pincher In Response to the Supplemental Declaration of Mr. Michaels at 12:2-4.) A party taking an appeal from a monetary judgment is entitled to a stay pending appeal as a matter of right upon posting a supersedeas bond in accordance with Fed.R.Civ.P. 62(d). Fed.R.Civ.P. 62(d) provides:

> When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule.[5]

The posting of a bond "protects the prevailing party from the risk of a later uncollectible judgment and compensates him for delay in the entry of final judgment."

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[5] The exceptions under Fed.R. Civ.P. 62(a) are "an interlocutory or final judgment in an action for injunction or in a receivership action, or a judgment or order directing an accounting in an action for infringement of letters of patent."

N.L.R.B. v. Westphal, 859 F.2d 818, 819 (9th Cir.1988).

Fed.R.Civ.P. 54(a) defines "judgment" as including "a decree and any order from which an appeal lies." An order imposing monetary sanctions against a party is appealable once a final judgment has been entered. Kordich v. Marine Clerks Ass'n, 715 F.2d 1392, 1393 (9th Cir.1983). Since a final judgment has been entered in this case, this order is considered a judgment under Fed.R.Civ.P. 54(a). Therefore, Fed.R.Civ.P. 62(d) applies.

A district court has considerable discretion in setting the amount of a supersedeas bond. Lamon v. City of Shawnee, 758 F.Supp. 654 (D.Kan.1991). The district court, under appropriate circumstances, may waive the bond requirement. Waiver of a full bond, however, will only be granted if the moving party objectively demonstrates good cause. Lamon, 758 F.Supp. at 655; Metz v. United States, 130 F.R.D. 458, 459 (D.Kan.1990). Since Mr. Pincher has failed to demonstrate good cause for a waiver of the bond requirement, the Court declines to grant a waiver and sets the supersedeas bond at $34,442.00.

VI.

CONCLUSION

For all of the reasons set forth above, defendants' Motions for Sanctions are granted and plaintiff's attorney, Michael Pincher, is ordered to pay $22,047 in sanctions to defendant Rockwell and $12,395.00 in sanctions to defendant UAW.

The Court denies Mr. Pincher's request

for a stay of the sanctions order without the posting of a bond. However, pursuant to Fed.R.Civ.P. 62(d), Mr. Pincher is entitled to a stay pending appeal upon posting a supersedeas bond in the amount of $22,047.00 in favor of defendant Rockwell and $12,395.00 in favor of defendant UAW.

IT IS SO ORDERED.

DATED: July 26, 1996.

/s/Richard A. Paez
Richard A. Paez
United States District Judge

APPENDIX B

FILED
JUN 05 1997
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARTHUR WILLIAMS, Plaintiff-Appellant, v. ROCKWELL INTERNATIONAL CORPORATION, a Delaware corporation; UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, AMALGAMATED LOCAL 887-UAW, an unincorporated labor union, Defendants-Appellees.	)	No. 96-55339 D.C. No. CV-94-03059 RAP (BQRx)
ARTHUR WILLIAMS, Plaintiff, and MIKE PINCHER, Appellant, v.	)	No. 96-56317 D.C. No. CV-94-03059 RAP (BQRx)

ROCKWELL INTERNATIONAL CORPORATION, a Delaware corporation; UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT AND WORKERS OF AMERICA, UAW, AMALGAMATED LOCAL 887-UAW, an unincorporated labor union, Defendants-Appellants.	MEMORANDUM*

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3

Appeal from the United States District Court for the Central District of California
Richard A. Paez, District Judge, Presiding

Submitted June 3, 1997**
Pasadena, California

In these cases Arthur Williams appeals the district court's grant of summary judgment and award of costs to the defendants in his hybrid labor action against Rockwell International Corporation and Local 887 of the United Automobile, Aerospace and Agricultural Implement Workers of America; and his attorney, Mike Pincher, appeals sanctions imposed upon him by the district court. We have jurisdiction under 28 U.S.C. @1291,[1] and we affirm but reduce

[1] ** The panel unanimously finds this case suitable for decision without oral argument. Fed.R.App.P. 34(a); 9th Cir. R. 34-4.

the awards of attorneys' fees in one respect.

I

We review a grant of summary judgment de novo in the light most favorable to the nonmoving party to determine if there are genuine issues of material fact under the relevant substantive law. Tzung v. State Farm Fire & Cas. Co., 873 F.2d 1338, 1339-40 (9th Cir. 1989). The undisputed facts establish that Williams's claims are either time barred, subject to dismissal for failure to exhaust Union remedies, fail to raise triable issues of fact, and/or are aimed at the wrong party.

Given that Williams argues that his discovery of the Comer letter in December 1991 began a new statutory limitations period, the only grievances that might be relevant to us are the ones he initiated after viewing the Comer letter, i.e., grievance Nos. RD 02037, RD 02044, RD 02045,

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Although Williams's notice of appeal in Docket no. 96-55339 did not indicate that he intended to appeal the district court's award of costs to the defendants or its denial of Rule 11 sanctions against counsel for Local 887, see Fed. R. App. P. 3(a), 4(a)(1), his discussion of these issues in his opening brief is enough to avoid prejudice to the appellees and to give us jurisdiction to review the challenged orders. Levald, Inc. v. City of Palm Desert, 998 F.2d 680, 691 (9th Cir. 1993), cert. denied, 510 U.S. 1093 (1994).

RD 02050, and RD 02653.[2]

A

Williams filed this suit on May 11, 1994. He learned July 22, 1993 that Local 887 had settled grievance Nos. RD 02037, RD 02050, and RD 02653. Williams did not appeal the resolution of RD 02050 or RD 02653 within the Union. Therefore, Williams either didn't exhaust mandatory Union remedies in RD 02050 and RD 02653, see Clayton v. International Union, 451 U.S. 679, 692 (1981), (holding exhaustion required where it might result in "complete relief ... or reactivation of [the] grievance"), or, if exhaustion wasn't required, failed to file suit within six months after learning of the Union's decision. See Del-Costello v. International Bhd. of Teamsters, 462 U.S. 151, 155 (1983). We need not decide which is true as it is clear that either way his claims based on RD 02050 and RD 02653 are barred.

B

Williams appealed the settlement of RD 02037 within the Union. On November 17, 1993, he learned that the Local had denied his appeal. Williams also learned by letter dated November 23, 1993 that he had no appeal rights under the UAW constitution because he was no longer a member. Williams took no further steps in the Union appeals process on RD 02037 (or RD 02045), but filed this lawsuit less than six months later.

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[2] In light of our disposition, we need not decide whether Williams's discovery of the Comer letter indeed revitalized the grievances we discuss.

Williams argues that (1) the statute of limitations for filing suit on RD 02037 was tolled until he learned of the Union's decision regarding his appeal rights in RD 02045, cf. Galindo v. Stoody Co., 793 F.2d 1502, 1510 (9th Cir. 1986) (holding fair representation claim not based on how grievance is presented to arbitrator "is tolled while good faith attempts are made to resolve that claim through grievance procedures"), but (2) pursuing further Union appeals in RD 02037 in good faith until the Union first ruled he had no standing to appeal, at which point he reasonably gave up and timely sued.

For their part, Rockwell and Local 887 argue that when Williams received the Union's November 1993 decision on RD 02045 he was in a Catch-22: if the Union was correct that he had no standing to appeal, he had wasted his time appealing and the limitations period had been running; but if the Union was wrong, Williams should have appealed to the Union's Public Review Board and risked wasting more time.[3] (Rockwell

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[3] Rockwell also argues, and the district court evidently concluded, that even if the statute was tolled during Williams's intra-Union appeal of RD 02037, his claim is barred because in addition to the time elapsed between the denial of Williams's Union appeal and the filing of the suit, we must factor in the time elapsed between the settlement notice July 22, 1993 and the filing of Williams's Union appeal in August 1993. We see no basis for parsing the tolling that

and Local 887 disagree about whether it was clear the Union was correct that Williams had no appeal rights.) Williams responds by noting that in rejecting his standing to appeal in RD 02045, the Union cited a PRB case; he argues that although he pursued his Union remedies in good faith to that point, the citation of apparently controlling PRB authority put him on notice that further pursuit of Union remedies regarding RD 02037 would be futile.

In order to show that appealing RD 02037 further within the Union (or appealing RD 02045 to the PRB) would have been futile, Williams must demonstrate that he couldn't have gotten a fair hearing or that the relief available would have been inadequate or untimely. Clayton, 451 U.S. at 691-92. Williams argues that he could not have appealed RD 02045 to the PRB because the Union's decision on his appeal rights was a matter of "official collective bargaining policy" unreviewable by the PRB under the UAW constitution. However, that argument lacks merit as intra-Union appeal rights have nothing to do with bargaining policies.

In order to decide whether Williams should have appealed in RD 02037 and/or RD 02045, then, we would have to determine whether PRB caselaw absolutely foreclosed Williams's right to appeal; and if it did, we would then have to decide whether the limitations period for RD 02037 should nonetheless have been tolled until late

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finely. If the limitations period is tolled, it is tolled until the claimant exhausts mandatory Union avenues. Galindo, 793 F.2d at 1510.

November 1993 on the ground that Williams was making "good faith efforts" by pursuing his intra-Union grievance appeals even though he lacked standing. Cf. Galindo, 793 F.2d at 1510.

However, we need not enter that thicket, for even assuming that Williams's suit over grievance No. RD 02037 was timely filed, his Statement of Genuine Issues in opposition to summary judgment contained only conclusory allegations about RD 02037 (and about all the other grievances) and failed to cite specific evidence in the record suggesting that Local 887 mishandled that grievance.

In order to meet its duty of fair representation, a union is required only to perform a "minimal investigation" of a grievance. Tenorio v. NLRB, 680 F.2d 534, 540 (9th Cir. 1990). Local 887 was required to make a reasoned decision, but not a reasonable one; and Williams failed to raise a triable claim that this minimal duty wasn't met when the Union resolved RD 02037. Summary judgment was therefore warranted for both defendants on the claims arising from RD 02037. See Johnson v. U.S. Postal Serv., 756 F.2d 1461, 1467 (9th Cir. 1985) (hybrid claim against employer fails if union provided fair representation).

C

Grievance Nos. RD 02044 and RD 02045, as consolidated, were withdrawn by the International Union, not the Local. Williams offers no coherent argument that anything in the record supports an unfair representation claim against Local 887

regarding those two grievances.[4]

D

In the absence of a dispute of fact that could rescue Williams's claims related to greivances RD 02037, RD 02044, RD 02045, RD 02050, or RD 02653, the district court properly granted summary judgment for Local 887 and Rockwell.

II

It follows that the district court did not err by denying Williams's Rule 59(e) motion and his motion to file a new complaint; or by granting the defendants' motions to strike material from the complaint and to dismiss with prejudice the claim for "invidious discrimination."

In light of our disposition, Williams's request for a new judge on remand is moot.

III

A

Williams argues that the district court abused its discretion by awarding costs to Local 887 and Rockwell. He argues that the defendants should have pursued a more efficient discovery strategy and moved for summary judgment earlier, and he objects in

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[4] Our disposition does not depend on whether Williams's intra-Union appeals of RD 02044 and Rd 02045 were by right or by "courtesy," or on whether he was told he had standing to appeal.

particular to the cost of $945 for videotaping depositions. We uphold the award of costs as Williams doesn't show that the district court's award "is based on an inaccurate view of the law or a clearly erroneous finding of fact." Corder v. Gates, 947 F.2d 374, 377 (9th Cir. 1991). There is no evidence that defense counsel litigated in bad faith or "with the intent to increase expenses." New Alaska Devel. Corp. v. Guetschow, 869 F.2d 1298, 1306 (9th Cir. 1989) (reviewing Rule 11 sanctions).

B

For similar reasons, we reject Williams's argument that the district court abused its discretion by denying his motion for sanctions against defense counsel.

IV

In the related appeal, Pincher argues that the district court abused its discretion by sanctioning him for what the court called "obstructive litigation tactics." The court found that Pincher: (1) sought leave to file an amended complaint asserting claims for intentional infliction of emotional distress and "invidious discrimination" that had already been dismissed without leave to amend, without arguing a colorable basis for what was a motion to reconsider the original dismissal; (2) filed a motion to reconsider the summary judgment order, asserting the identical arguments raised in opposition to summary judgment, in violation of the Local Rules; (3) filed a premature motion to stay enforcement of costs before the court had entered judgment; (4) repeatedly disrupted depositions with unfounded objections and obstreperous conduct, despite being

sanctioned once by the magistrate; (5) assisted Williams in impermissibly altering deposition transcripts; (6) failed to produce requested documents, then arrived at a deposition with a shopping cart of documents and invited defense counsel to search through it; (7) threatened opposing counsel by letter, by phone, and in person with physical harm; and (8) "constantly" used abusive language in letters and in person. In a carefully reasoned order, the district court specifically considered Pinchers conduct in relation to its power to sanction under 28 U.S.C. @1927, the Local Rules, Fed. R. Civ. P. 30(d), and inherent authority; made findings as to each; accounted for any duplication; and concluded that sanctions were indicated for discrete violations as well as for conduct in bad faith and interference with the administration.

For time spent opposing frivolous motions, the court awarded Rockwell $12,047 (out of $26,017.50 requested) and Local 887 $2,395 (of $3,925 requested). For Pincher's behavior at depositions, the court directed him to pay Rockwell and Local 887 $5,000 each. For other abusive conduct, the court ordered Pincher to pay Rockwell and Local 887 another $5,000 each. The court set the supersedeas bond at $34,442.

We review for abuse of discretion. New Alaska, 869 F.2d at 1305.

A

Pincher argues that his motion to file the "supplemental complaint" wasn't frivolous because it included allegations of new, post-hearing incidents of retaliation against Williams had no cause of action for

emotional distress or "invidious discrimination." In seeking to refile these claims Pincher ignored the court's ruling and reasserted the same legal theories with some new factual allegations. Put another way, the new allegations plainly weren't "material" in light of the court's prior legal ruling. See Local Rule 7.16(b) (motions to reconsider). The district court could fairly find the motion frivolous in its entirety.

B

Pincher argues that the premature motion to reconsider the summary judgment order wasn't frivolous because it cited caselaw on fair representation which the district court "needed to be shown." Our previous discussion of the merits demonstrates that the duty of fair representation is largely irrelevant to the threshold reasons, ably explained by the district court, that summary judgment was appropriate in this case -- i.e., procedural defaults and time bar. But even assuming the fair representation caselaw were important, Pincher's motion didn't rely on new law or new facts that couldn't have been raised earlier. It was a waste of everyone's time, which is one definition of frivolous.

C

Pincher argues that he shouldn't have been sanctioned for prematurely filing the motion to stay enforcement of costs because "the controlling matter is that costs of some kind were to be awarded and would have to be stayed pending appeal. This was important to know in advance, regardless of whether costs amounts were to be contested."

Pincher cites Larez v. City of Los Angeles, 946 F.2d 630, 636 (9th Cir. 1991), where we held that a Rule 59 motion may be filed prior to the judgment.

Without deciding whether the motion to stay was timely, we agree that the Larez case, which Pincher and the court discussed at the hearing, provided at least a colorable and non-frivolous basis for seeking a stay of enforcement before the award of costs. As it was only the untimeliness of the motion to stay enforcement that the district court deemed frivolous, we modify the court's order to remove the awards of $3,311 to Rockwell and $1,450 to Local 887 for time spent opposing this motion.

D

Pincher argues that he should be excused for his behavior at depositions because he was incited by opposing counsel. But the conduct of one's adversaries, or a "hostile environment," cannotexcuse the kind of outbursts that Pincher indulged in. Pincher's verbal and written abusiveness far surpassed anything that opposing counsel said or wrote. And his invocation of the First Amendment is also meritless; Pincher wasn't being sued for libel or harassment, but has been sanctioned for unprofessionally disruptive conduct as a lawyer for which he has no excuse.

E

Pincher blames most of the other discovery disputes and delays on opposing counsel. He raises mainly issues of credibility that lie in the sound discretion of the district court. Having carefully

reviewed the record, we do not believe the district court clearly erred in finding that Pincher was overwhelmingly at fault, or abused its discretion in imposing the sanctions. See New Alaska, 869 F.2d at 1305.

We are constrained to add, moreover, that our opinion in Combs v. Rockwell International Corp., 927 F.2d 486 (9th Cir.), cert. denied, 502 U.S. 859 (1991), made it quite clear that Pincher's "combined fraud and incompetence" in allowing clients to make wholesale and material alterations in deposition transcripts is unacceptable. Id. at 489. Yet the record in this case shows that the conduct continues. Pincher would be well advised to take Combs, and his professional and ethical obligations as a lawyer admitted to the bar of this court, seriously, because we do.

F

Pincher submits that the sanctions should be reduced or overturned due to his financial straits, and he incorporates by reference his motion for reconsideration of our denial of a stay of enforcement pending appeal. However, neither Pincher's brief nor his prior motions in this court support by argument the request that we mitigate the sanctions on grounds of financial hardship. Pincher has therefore abandoned this issue. Leer v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988).

G

Pincher's motion to augment the record is denied as moot.

V

The panel will retain jurisdiction over any motins that Rockwell or Local 887 may file seeking costs or fees stemming from this appeal.

AFFIRMED AS MODIFIED.

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED
JUL 17 1997

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

ARTHUR WILLIAMS, Plaintiff-Appellant, v. ROCKWELL INTERNATIONAL CORPORATION, a Delaware corporation; UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, AMALGAMATED IMPLEMENT WORKERS OF AMERICA, UAW, an unincorporated labor union, Defendants-Appellees.	No. 96-55339 D.C. No. CV-94-03059 RAP (BQRx) ORDER
ARTHUR WILLIAMS, Plaintiff, and MIKE PINCHER, Appellant, v.	No. 96-56317 D.C. No. CV-94-03059 RAP (BQRx)

ROCKWELL INTERNATIONAL CORPORATION, a Delaware corporation; UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW, AMALGAMATED LOCAL 887-UAW, an unincorporated labor union,

Defendants-Appellees.

Before: HUG, Chief Judge; FERNANDEZ and RYMER, Circuit Judges.

The panel has voted to deny the both petitions for rehearing and to reject the suggestions for rehearing en banc.

The full court has been advised of the suggestions for en banc rehearing, and no judge of the court has requested a vote on the suggestions for rehearing en banc. Fed. R. App. P. 35(b).

The petitions for rehearing are DENIED and the suggestions for a rehearing en banc are REJECTED.